

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

JESSICA HODGES, as natural guardian of)
Minor children, LMC and DLC; ESTATE)
OF LEE MICHAEL CREELY by and)
Through Warren Ratchford, its)
Administrator,)

Plaintiffs,)

v.)

Civil Action No. 4:22-cv-00067

CHATHAM COUNTY, GEORGIA;)
CORRECTHEALTH LLC;)
CORRECTHEALTH CHATHAM, LLC;)
CARLO MUSSO, M.D.; KAREN)
FORCHETTE; ALFRED NEVELS;)
SELENA CARDONA; TEANNA)
FRANCES-HENDERSON; TERENCE)
JACKSON; DON WHITE; KARLOS)
MANNING; YVETTE BETHEL-)
QUINNEY; LOWRETTA FLORENCE;)
AMBER ANDERSON; JACKIE HARNED;)
SUSAN RIVERA; and LOUIKISHA)
ROBERTS,)

Defendants.)

**DEFENDANTS' MOTION FOR LEAVE TO FILE AMENDED ANSWER AND
INCORPORATED SUPPORTING BRIEF**

Selena Cardona, Terence Jackson, Teanna Frances-Henderson, and Yvette Bethel-Quinney, Defendants in the above-referenced matter ("These Defendants"), by and through undersigned counsel, file this, their Motion for Leave to File Amended Answer, showing the Court the following:

INTRODUCTION

Defendants CorrectHealth LLC, CorrectHealth Chatham LLC, Musso, Forchette, Florence, Anderson, Harned, and Rivera (collectively referred to as the “Medical Defendants”) filed a Motion for Leave to file Amended Answer on July 21, 2022. (Doc. 35). In their motion, the Medical Defendants seek leave of Court to amend their answer to assert the affirmative defense of assumption of risk. (Id.). These Defendants seek the same relief. In the interest of judicial efficiency, this brief is truncated since the factual and legal bases for granting this motion are the same as set forth in the Medical Defendants’ motion.

FACTS AND PROCEDURAL BACKGROUND

Plaintiffs’ claims arise out of the death of Lee Michael Creely (“Mr. Creely”) while he was incarcerated at the Chatham County jail. (Doc. 1-1). The Court’s scheduling order provides that the last day for filing motions to amend was May 23, 2022, and that discovery closes on December 22, 2022. (Doc. 28).

A key issue in the case is the cause of Mr. Creely’s death. (Doc. 1-1, Compl. at par. 100) (alleging Mr. Creely “died by homicide” as a “direct and proximate result of the Defendants’ wrongful acts”). Contrary to the Complaint’s allegations, documents produced in discovery reveal that Mr. Creely died from fentanyl intoxication, and that he likely obtained the fentanyl by smuggling it into the jail. (See Doc. 36, exhibits to which are the autopsy report concluding Mr. Creely died of fentanyl intoxication and body scans showing Mr. Creely apparently smuggled contraband into the jail by storing it in an orifice; both documents were produced by Plaintiffs in discovery

served on July 15, 2022). Those facts, which were not known to These Defendants when their answer was filed¹, provide them with a basis to assert the affirmative defense of assumption of risk. Because there has been no undue delay, because Plaintiffs will not be prejudiced by the proposed amendment, and because the amendment is not sought in bad faith nor for a dilatory motive, the Court should grant this motion.

ARGUMENT AND CITATION OF AUTHORITY

Due to the procedural posture of the case, These Defendants may only amend their answer with consent of opposing counsel or with leave of Court. Fed. R. Civ. P. 15(a)(2). And, because the scheduling order's deadline for seeking leave to amend has passed, good cause must be shown. Fed. R. Civ. P. 16(b)(4). Motions for leave to amend should be denied where: (1) there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) allowing the amendment would cause undue prejudice to the opposing party; or (3) the amendment would be futile. None of those grounds exist in this case.

This motion is supported by good cause, and the proposed amendment is not futile since the basis for the assumption of risk defense was produced by Plaintiffs in discovery on July 15, 2022, and because the defense can apply to a self-induced fatal drug intoxication such as the one suffered by Mr. Creely. Hull v. Merck & Co., 758 F.2d 1474, 1476 (11th Cir. 1985) ("Under Georgia law, a plaintiff assumes the risk

¹ These Defendants were originally represented by the Chatham County Attorney. (Doc. 8-1). Undersigned counsel entered his appearance for Selena Cardona, Terence Jackson, and Yvette Bethel-Quinney on June 9, 2022 (doc. 29) and appeared for Teanna Frances-Henderson on July 22, 2022.

when he deliberately chooses an obviously perilous course of conduct and fully appreciates the danger involved.”). There can be no evidence of delay or prejudice since documentation of Mr. Creely’s death by fentanyl intoxication and the means by which he apparently acquired the fentanyl was only recently produced by Plaintiffs in discovery. Further, there can be no prejudice since no depositions have been taken and there are months of discovery remaining. (Doc. 28).

CONCLUSION

The Court should grant These Defendants’ motion for leave to amend their answer to add the affirmative defense of assumption of risk. The case is in its early stages, the proposed defense is not futile, the defense is not raised for a dilatory purpose, and Plaintiffs will not be prejudiced if the motion is granted.

A copy of the proposed amendment is attached hereto as Exhibit 1.

Respectfully submitted this 27th day of July, 2022.

OLIVER MANER LLP

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CERTIFICATE OF SERVICE

This is to certify that I have this day caused electronic notification of filing and service of the foregoing **MOTION FOR LEAVE TO FILE AMENDED ANSWER AND INCORPORATED SUPPORTING BRIEF** upon all counsel of record for the parties by filing the same via the Court's CM/ECF filing system.

This 27th day of July, 2022.

Respectfully submitted,

OLIVER MANER LLP

/s/Benjamin M. Perkins

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